UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES N. KITTNER, **01-CV-0146E(Sr)**

Plaintiff,

-vs- **MEMORANDUM**

THE METROPOLITAN LIFE INSURANCE COMPANY, **and**

ORDER

Defendant.

Plaintiff commenced the instant action January 31, 2000 in the New York State Supreme Court for the County of Wyoming claiming that defendant is obligated to pay him the proceeds from a certain life insurance policy. Defendant received the Summons and Complaint by regular mail February 7, 2001 and thereupon timely filed a Notice of Removal asserting that this is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1331 in that plaintiff's claim for benefits is dependent upon federal statutes and federal

regulations. Presently before the undersigned is plaintiff's motion to remand. Such motion will be granted.

According to the Complaint, plaintiff is the beneficiary of a life and accidental death and dismemberment policy purchased by the now deceased policyholder through the United States Office of Personnel Management for employees of the Veterans' Administration. Compl. ¶¶2, 4. This policy was issued pursuant to the Federal Employees Group Life Insurance Act ("FEGLIA"), 5 U.S.C. §§8701–8716. Upon the death of the policyholder, plaintiff made a claims for accidental death benefits under the policy. Compl. ¶9. Defendant thereon denied payment, for the stated reason that the insured's death had not been accidental within the meaning of the FEGLIA policy at issue, and plaintiff commenced this suit to collect such benefits. Compl. ¶¶10, 11; Jay D. Kenigsberg, Esq., Aff. ¶¶11–12.

Inasmuch as both parties are citizens of New York, this Court's jurisdiction must rest upon 28 U.S.C. §1331 which provides for federal

jurisdiction over "all civil actions arising under the * laws *** of the United States." Federal question jurisdiction exists where a well-pleaded complaint "establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Franchise Tax Bd.* v. *Construction Laborers Vacation Trust,* 463 U.S. 1, 27–28 (1983). "To remove a case as one falling within federal-question jurisdiction, the federal question ordinarily must appear on the face of a properly pleaded complaint; an anticipated or actual federal defense generally does not qualify a case for removal." *Jefferson County, Ala.* v. *Acker,* 527 U.S. 423, 430-431 (1999). In this regard, the Second Circuit Court of Appeals has described the necessary analysis as follows:**

> **"There are two tests under which an action may present a federal question. The first asks whether federal law creates the cause of action. If so, federal jurisdiction exists.**
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> **"If state law creates the cause of action, the second test asks whether that cause of action poses a substantial federal question**
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> **"To determine when the federal element is deemed sufficiently substantial [a federal court] must look to the nature of the federal interest at stake."** ***West 14th St. Commerical Corp.*** **v.** ***5 West 14th Owners Corp.,*** **815 F.2d 188, 192–193 (2d Cir. 1987).**

If no federal question can be gleaned from the face of the Complaint, this Court facially has no jurisdiction over the present matter and a remand is generally required. The undersigned's review of the Complaint reveals that such remand is demanded here.

FEGLIA was enacted "to provide low-cost group life insurance to Federal employees" — H.R.Rep. No. 2579, 83d Cong., 2d Sess. (1954) — and pursuant to such act "the Government is empowered to procure insurance on behalf of its employees from private insurance carriers." ***Brinson*** **v.** ***Brinson,*** **334 F.2d 155, 158 (4th Cir. 1964). It has been said that "FEGLIA provides insurance for all federal employees as an**

additional job benefit in much the same way as any large private employer provides group life insurance to its employees at shared cost." *Sedarous* v. *Sedarous*, 666 A.2d 1362, 1365 (N.J. Super. Ct. App. Div. 1995). In doing so, at least one federal court has noted that "the United States government acts as an agent and not as the insurer." *Railsback* v. *United States*, 181 F. Supp. 765, 766 (D. Neb. 1960). There is "no policy of insurance between the government and the employee"; the policy of insurance exists merely between the policyholder and the insurance company. *Ibid*. At the heart of the instant action, therefore, only a breach of contract action between private litigants lies, with the obligations to perform thereunder being "a creation of the state." *Gully* v. *First Nat. Bank*, 299 U.S. 109, 155 (1936); *see also 1610 Corp*. v. *Kemp*, 753 F. Supp. 1026, 1030 (D. Mass. 1991) (stating that, merely because "a contract is subject to federal regulation," it does not follow "that its interpretation and aspects of its performance are governed by federal law"). Accordingly,

"questions concerning FEGLIA policies are [usually] resolved by resort to state law" — *Mall* v. *Atlantic Fin. Fed.*, 127 F.R.D. 107, 110 (W.D. Pa. 1989) —, especially where no distinctive federal policies have been implicated in the Complaint and where "the interest in uniformity in construction of federal contractual provisions is not [by itself] enough to pose federal questions issues." *Virgin Islands Housing. Auth.* v. *Coastal Gen. Const.*, 27 F.3d 911, 916 (3d Cir. 1994); *see also Metropolitan Life Ins. Co.* v. *White*, 972 F.2d 122, 124 (5th Cir. 1992) ("The scope of a federal right is, of course, a federal question, but that does not mean that its content is not to be determined by state, rather than federal law.").[1] Defendant has presented no rationale for deviating from this norm.

That said and because the undersigned finds that the facts peculiar to this action indicate that it is guided by the laws of New York, the

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[1]**It should also be noted that neither party has argued that federal courts have exclusive jurisdiction over FEGLIA-related actions which involve only private litigants. If such an argument were to be made, it would be without merit.**

question to be answered is simple: "Is the federal interest herein sufficiently substantial for this Court to retain jurisdiction?" In a word, "No." New York law applies because contracts between private parties are normally interpreted according thereto. The claim for benefits pressed by plaintiff in his Complaint was neither created by federal law — rather it was created by an alleged breach of a contract, which contract was authorized to be procured pursuant to federal law — nor has his Complaint been shown to implicate some significant federal interest or policy which may be in conflict with state law. In this regard, the undersigned is fully aware of those FEGLIA actions, most of which were commenced as interpleader actions, wherein certain provisions of FEGLIA were deemed to preempt inconsistent state law thus implicating federal interests and creating a substantial federal question for a federal court to decide. *See, e.g., Metropolitan Life Ins. Co.* v. *Sullivan*, 96 F.3d 18 (2d Cir. 1996) (stating that the FEGLIA requirement — specifically 5 U.S.C. §8705 — which demands that any

change of beneficiary be signed by the policyholder, preempts section 5–1502F(2) of New York's General Obligations Law); ***Metropolitan Life Ins. Co.*** **v.** ***Pearson*****, 6 F. Supp. 2d 469, 471 (D. Md. 1998) (noting that FEGLIA permits a federal employee to designate any beneficiary he chooses, irrespective of any other state law obligations);** ***Metropolitan Life Ins. Co.*** **v.** ***Pritchett*****, 843 F. Supp. 1006 (D. Md. 1994) (relying on FEGLIA and federal common law to determine the beneficiaries of a FEGLIA policy);** ***Mounts*** **v.** ***United States*****, 838 F. Supp. 1187, 1194 (E.D. Ky. 1993) (stating that FEGLIA, not state law, determines who is the recipient of the FEGLIA benefits pursuant to 5 U.S.C. §8705). Unlike those cases, however, no colorable argument has been advanced showing that any issue of preemption will arise in this action and the Complaint indicate that such is a possibility. Even if such were the case, a defendant generally may not remove an action on the basis of federal preemption unless Congress has so completely preempted an area of law that any civil complaint filed thereunder is necessarily federal in**

character. *See Metropolitan Life Ins. Co.* v. *Taylor*, 481 U.S. 58, 63–64 (1987). Such is not this case. Although federal statutes and regulations may ultimately be looked to at some point in this litigation,[2] plaintiff's action, at its core, requires only an interpretation of the FEGLIA policy and such interpretation is guided by state law. In short, plaintiff's Complaint does not present a federal question.

Accordingly, it is hereby *ORDERED* that plaintiff's motion to remand is granted, that this case shall be remanded to New York State Supreme Court for the County of Wyoming, and that this case shall be closed in this Court.

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[2]**While defendant has taken great care to explain to this Court how FEGLIA determines which employees are eligible for such coverage, the amount thereof, how the plan is paid for, *etc.*, none of the reasons stated creates a substantial federal interest in this action where the effect of such provisions is not at issue on the face of the Complaint. Were it shown to be otherwise, the outcome of the present motion would, arguably, be different because the federal interest could be construed as obvious and substantial. *See* 5 U.S.C. §8709(d)(1) ("The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any law of any State or political subdivision thereof, or any regulation issued thereunder, which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions.").**

DATED: Buffalo, N.Y.

April 13, 2001

S.U.S.D.J.